

# EXHIBIT 1

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 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN BERNARDINO  
 SAN BERNARDINO CIVIL DIVISION

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF SAN BERNARDINO**

MARC RIVERA, individually and on behalf ) CASE NO. **CINDS1811980**  
 of others similarly situated, )

Plaintiffs,

vs.

WESTERN EXPRESS, INC., doing )  
 business as WESTERN EXPRESS )  
 TRANSPORT OF CALIFORNIA, INC., a )  
 Tennessee Corporation; and DOES 1 through )  
 10, inclusive, )

Defendants.

**CLASS ACTION COMPLAINT FOR:**

- (1) Failure to Pay Minimum Wages for All Hours Worked;
- (2) Failure to Provide Mandated Meal Periods or to Pay Additional Wages in Lieu Thereof;
- (3) Failure to Provide Mandated Rest Periods or to Pay Additional Wages in Lieu Thereof;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements;
- (6) Violation of Unfair Competition Law

**DEMAND FOR JURY TRIAL**

copy

1 Plaintiff MARC RIVERA (referred to herein as "Plaintiff" or "RIVERA"), on behalf of  
2 himself and all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION & GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer, WESTERN EXPRESS,  
5 INC., doing business in California as WESTERN EXPRESS TRANSPORT OF CALIFORNIA,  
6 INC., and DOES 1 through 10 (collectively referred to herein as "Defendants"), for California  
7 Labor Code violations stemming from Defendants' failure to pay minimum wages for all hours  
8 worked, failure to provide mandated meal and/or rest periods or to pay additional wages in lieu  
9 thereof, failure to timely pay final wages upon separation of employment, and failure to provide  
10 complete, accurate itemized wage statements.

11 2. Plaintiff brings this class action on behalf of himself and all other similarly-situated  
12 current and former drivers of Defendants who resided in California at any time within the  
13 Relevant Time Period, as defined below, and whose job duties include, among other things,  
14 driving commercial motor vehicles and performing services related thereto, and who are/were  
15 compensated on a per-mile basis for at least part of their compensation (hereinafter, the  
16 "Represented Employees").

17 3. At all relevant times, Plaintiff and other similarly-situated Represented Employees  
18 are/were responsible for providing freight hauling and logistic services for Defendants within the  
19 State of California, as well as throughout various other states.

20 4. Plaintiff and Represented Employees seek to recover damages, liquidated damages,  
21 interest, penalties, costs of suit and attorneys' fees resulting from Defendants' failure to pay  
22 minimum wages for all hours worked, failure to provide mandated meal and/or rest periods, failure  
23 to timely pay final wages upon separation, failure to provide complete, accurate itemized wage  
24 statements and injunctive relief against Defendants' unfair business practices related thereto.

25 5. The acts complained of herein have occurred, are presently occurring, and are  
26 expected to continue occurring, within the time period from four (4) years preceding the filing of  
27 the original Complaint herein, up to and through the time of trial for this matter (hereinafter, the  
28 "Relevant Time Period").

1           6.       After initial investigation, Plaintiff alleges that Western Express paid drivers solely  
2 by mileage and did not pay for pre-and post-trip inspection work duties and waiting time subject  
3 to employer control, and other non-driving time performing work duties in violation of California  
4 law. See, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36 (employer does not  
5 satisfy minimum wage obligations under Wage Orders by averaging "flag-rate" (piece-rate) pay to  
6 auto mechanics, which would constitute illegal wage deduction and forfeiture under Labor Code  
7 sections 221 and 223; employees entitled to separate hourly compensation for time spent waiting  
8 for repair work or performing other non-repair tasks directed by employer during their shifts).  
9 Further, Plaintiff alleges that the employer did not separately pay for compliant 10-minute rest  
10 periods in violation of California law. See, *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864  
11 (task-based or piece-rate compensation formula that does not compensate separately for rest  
12 periods does not comply with California minimum wage laws).

13           7.       Further, after investigation, based on the California Division of Labor Standards  
14 Enforcement ("DLSE") records, the employer in this case did not timely comply with Labor Code  
15 section 226.2. Labor Code section 226.2 provides employers an affirmative defense against any  
16 claims for recovery of wages, liquidated damages, civil penalties, statutory penalties, or premium  
17 pay under Labor Code section 226.7 that are based solely on the employer's failure to timely pay  
18 piece-rate employees the compensation due for rest and recovery periods and other non-productive  
19 time for wages earned prior to December 31, 2015. The employer must have, by no later than  
20 December 15, 2016, paid the employee's non-productive time at the highest of: The hourly rate  
21 determined by dividing the total compensation for the workweek—exclusive of compensation for  
22 rest and recovery periods and any premium compensation for overtime—by the total hours worked  
23 during the workweek, exclusive of rest and recovery periods; or Minimum wage plus interest; or 4  
24 percent of the employee's gross earnings less up to 1 percent paid for non-productive time for the  
25 time period of July 1, 2012 to December 31, 2015. Plaintiff is informed and believes that  
26 Defendants failed to comply with Labor Code section 226.2, and thereafter, failed to comply with  
27 the requirements to pay drivers for 10-minute rest periods at their regular rate of pay, or at least at  
28 California's applicable minimum wage.

1 8. For the Relevant Time Period, Plaintiff alleges that Defendants, and each of them:

2 a. Failed to pay the statutory minimum wage for all hours worked to Plaintiff  
3 and Represented Employees in violation of California Labor Code §§ 221, 223,  
4 1194, 1194.2, 1197, and Industrial Welfare Commission ("IWC") Wage Order 9;

5 b. Failed to pay all wages due and owing to Plaintiff and Represented  
6 Employees in violation of California Labor Code §§ 201, 202, 203, 212, 218.6,  
7 221, 223, 224, 226.7, 450, 512, 558, 1194, 1194.2, 1197, and IWC Wage Order 9;

8 c. Failed to provide Plaintiff and Represented Employees at least thirty (30)-  
9 minute duty-free meal periods as mandated by California law, or to pay such  
10 employees one (1) hour of additional wages at the employees' regular rate of  
11 compensation for each workday that the meal period is not provided, as required by  
12 California Labor Code §§ 226.7, 512, 558, and IWC Wage Order 9;

13 d. Failed to provide Plaintiff and Represented Employees with mandated rest  
14 periods of at least ten (10) minutes per four (4) hours of work, or major fraction  
15 thereof, or to pay such employees one (1) hour of additional wages at the  
16 employees' regular rate of compensation for each workday that the rest period is  
17 not provided, as required by California Labor Code §§ 226.7, 558, and IWC Wage  
18 Order 9;

19 e. Failed to provide complete, accurate itemized wage statements to Plaintiff  
20 and Represented Employees in violation of California Labor Code §§ 226, 226.6,  
21 1174, 1174.5, 1175, and IWC Wage Order 9;

22 f. Failed to provide Plaintiff and Represented Employees with the mandated  
23 notice required under California Labor Code § 2810.5;

24 g. Violated California Business and Professions Code §§ 17200, *et seq.* as  
25 further set forth below.

26 **JURISDICTION & VENUE**

27 9. Jurisdiction and venue are proper here because, upon information and belief and  
28 throughout the Relevant Time Period, Defendants were, and are, licensed to do business in the

1 State of California, maintain a physical facility located at 15521 Slover Avenue, Fontana,  
2 California, County of San Bernardino, and because many of the acts alleged herein occurred  
3 throughout San Bernardino County and/or other counties within the State of California.

4 10. Throughout the Relevant Time Period, Plaintiff and Represented Employees  
5 resided within the State of California and performed work for Defendants throughout the State of  
6 California, as well as in various other states. The unlawful acts alleged herein have a direct effect  
7 on Plaintiff and those similarly situated within the State of California.

8 11. Plaintiff is informed and believes and thereon alleges that he and Represented  
9 Employees had virtually the same job duties and responsibilities. As a consequence, any  
10 differences between particular individual employees who work or have worked as a driver for  
11 Defendants, in terms of the duties actually performed, were and are legally insignificant to the  
12 issues presented by this action.

13 12. Represented Employees have suffered damages and will continue to suffer the  
14 same harm as Plaintiff as a result of Defendants' unlawful conduct unless the relief requested  
15 herein is granted.

#### 16 PARTIES

##### 17 Plaintiff

18 13. Plaintiff MARC RIVERA resides in Gardena in the State of California. RIVERA  
19 was employed with Defendants from approximately January 2017 through August 2017 as a truck  
20 driver and was paid on a piece-rate or by-the-mile basis.

21 14. According to the wage statements RIVERA received while working for  
22 Defendants, his employer was Defendant WESTERN EXPRESS, INC. However, California  
23 secretary of state records another domestic WESTERN EXPRESS, INC. in Fresno, California,  
24 who is was not Plaintiff's employer. Rather, since the name of was taken, WESTERN EXPRESS,  
25 INC., omitted the fact on its wage statements that it was operating in the state of California as  
26 WESTERN EXPRESS TRANSPORTATION OF CALIFORNIA, INC., which actually misled  
27 Plaintiff since employment record requests were sent to the incorrect company, the "Western  
28 Express. Inc." operating in Fresno, California. The Fresno, California entity was never Plaintiff's



1 employer at any time during the relevant time period and once presented with a record request,  
2 informed Plaintiff through his counsel that no such records of his employment existed.

3 15. Throughout his employment with Defendants, Plaintiff did not receive minimum  
4 wages for all hours worked, was not provided with mandated meal and/or rest periods or paid the  
5 mandated additional wages in lieu thereof. Plaintiff also did not receive complete, accurate  
6 itemized wage statements. Additionally, Plaintiff was not timely paid his final wages upon his  
7 separation of employment from Defendants.

8 **Defendants**

9 16. On information and belief, and throughout the Relevant Time Period, Defendant  
10 WESTERN EXPRESS, INC. is a Tennessee corporation authorized to do and doing business in  
11 the State of California as WESTERN EXPRESS TRANSPORT OF CALIFORNIA, INC. A  
12 search of the California Secretary of State Webpage produced the following information about  
13 Defendant WESTERN EXPRESS, INC.: (a) corporate license number C2802026, filed September  
14 6, 2005, and active; (b) address of 7135 Centennial Place, Nashville, Tennessee 37209; and (c) the  
15 agent for service of process as National Registered Agents, Inc., 818 W. Seventh St., Suite 930,  
16 Los Angeles, California 90017.

17 17. All Defendants' principle business offices and local headquarters in the State of  
18 California are primarily located in San Bernardino County, in Fontana, California.

19 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants are  
20 engaged in the hauling and delivery of freight across the United States.

21 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants  
22 conduct business throughout the United States and maintain a terminal located in Fontana,  
23 California, among other states, and is the legal employer of Plaintiff and Represented Employees  
24 during the Relevant Time Period.

25 20. Plaintiff is ignorant of the true names, capacities, relationships, and extent of  
26 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 10,  
27 inclusive, but on information and belief alleges that those Defendants are legally responsible for  
28 the payment of penalties and damages to Plaintiff and Represented Employees by virtue of

1 Defendants' unlawful actions and practices, and therefore sues these Defendants by such fictitious  
2 names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE  
3 Defendants when ascertained.

4 21. Plaintiff is informed and believes, and based thereon alleges, that the Defendants  
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
6 scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are  
7 legally attributable to the other Defendants. On information and belief, a unity of interest and  
8 ownership between each Defendant exists such that all Defendants acted as a single employer of  
9 Plaintiff and Represented Employees.

10 **CLASS ACTION ALLEGATIONS**

11 22. Plaintiff hereby incorporates by reference Paragraphs 1 through 19 above as though  
12 fully set forth herein.

13 23. Plaintiff brings this action on behalf of himself and all others similarly situated as a  
14 class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent  
15 is defined as follows:

16 All current and former employee drivers of Defendants who resided in  
17 California at any time within the Relevant Time Period, whose job duties  
18 include, among other things, driving commercial motor vehicles and  
performing services related thereto within the State of California, and who  
are/were paid on a rate-per-mile basis for compensation purposes.

19 24. Plaintiff reserves the right to amend or modify the class description with greater  
20 specificity or further division into subclasses or limitation to particular issues as appropriate.

21 25. Plaintiff RIVERA is a member of the Class he seeks to represent.

22 26. This action is appropriately suited for a class action because:

23 a. The members of the Class which Plaintiff seeks to represent are sufficiently  
24 numerous that joinder is impracticable. Although the exact number is currently  
25 unknown to Plaintiff, this information is easily ascertainable from Defendants'  
26 payroll and personnel records.

27 b. Common questions of fact and law predominate. Such common questions  
28 include, but are not limited to:



- i. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay the statutory minimum wage to Plaintiff and Class members for all hours worked;
- ii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide daily mandated meal and/or rest periods to Plaintiff and Class members and/or failing to compensate Plaintiff and Class members with one additional hour of wages in lieu of each meal or rest period denied;
- iii. Whether Defendants violated the California Labor Code by failing to pay all wages due upon separation of employment between Defendants and Plaintiff and Class members, whether such separation was voluntary or involuntary;
- iv. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and Class Members with complete, accurate itemized wage statements;
- v. Whether Defendants violated California Business & Professions Code §§ 17200, *et seq.* by: failing to pay minimum wages for all hours worked by Plaintiff and Class Members; failing to provide mandated meal and/or rest periods to Plaintiff and Class Members and not compensating such employees with one hour of additional wages in lieu of each meal or rest period denied; failing to timely pay all final wages due upon separation of employment between Defendants and Plaintiff Class Members; and failing to provide Plaintiff and Class Members with complete, accurate itemized wage statements;
- vi. Whether Defendants violated §§ 17200, *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 212, 218.6, 221, 223, 224, 226, 226.6, 226.7, 450, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1198.5, 2800, 2802, and 2810.5,

among possibly other sections inadvertently omitted, and the applicable IWC Wage Order, which violations constitute false, fraudulent, unlawful, unfair and deceptive business practices; and

vii. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200, *et seq.*

c. Plaintiff's claims are typical of the Class. Plaintiff, like other members of the Class, was subjected to Defendants' ongoing Labor Code and IWC Wage Order violations pertaining to payment of minimum wages for all hours worked, meal and rest periods, payment of final wages upon separation of employment, inaccurate and/or incomplete itemized wage statements

d. Plaintiff will fairly and adequately protect the interest of all members of the Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation due to him and all Class Members. Plaintiff's interests are not in conflict with those of the Class members. Further, Plaintiff and Class Representative MARC RIVERA's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including many wage and hour class action cases.

27. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policies and practices alleged in the Complaint.

28. Class action procedure will allow those similarly-situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff knows of no difficulty that might be encountered in management of this litigation which would preclude maintenance as a class action.

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**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED  
(Cal. Labor Code §§ 221, 223, 1194, 1194.2, 1197; IWC Wage Order 9, § 4)**

29. Plaintiff hereby incorporates by reference Paragraphs 1 through 27 above as though fully set forth herein.

30. Failure of an employer to pay its employees the California minimum wage violates, *inter alia*, Labor Code § 1197 and IWC Wage Order 9, § 4.

31. During the Relevant Time Period, Plaintiff and Class Members were employed by Defendants as over-the-road drivers and were paid a per-mileage rate for each mileage driven for at least part of their compensation.

32. While over-the-road, Plaintiff and Class Members were required to remain on assignment continually for more than 24 hours and were confined to the general vicinity of their assigned truck for more than 24 consecutive hours. Plaintiff and Class Members reported their status to Defendants via the Qualcomm computer in their assigned truck.

33. During the Relevant Time Period, Defendants required Plaintiff and Class Members to remain under their control without paying for all "hours worked" and resulted in Plaintiff and Class members earning less than the applicable California minimum hourly wage for each hour worked.

34. Specifically, Defendants maintained and continue to maintain a practice of refusing to compensate Class Members for time spent not driving, including but not limited to, fueling vehicles, waiting for the loading and unloading of trailers, performing pre- and post-trip inspections, and completing paperwork.

35. Plaintiff and Class members were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the Relevant Time Period for each hour worked.

36. Plaintiff is informed and believes, and thereon alleges, that Defendants intentionally, willfully, and improperly failed to pay minimum wages to him and Class Members in violation of Labor Code §§ 221, 223, 1194, and 1197.

37. Defendants' conduct was willful because Defendants knew Plaintiff and Class Members were entitled to be paid at least the California minimum wage throughout the Relevant Time Period for each hour worked, yet Defendants chose not to pay them in accordance thereto.

38. As a result of Defendants' wrongful conduct, Plaintiff and Class Members have been damaged in amounts to be proven at trial.

39. Plaintiff, on behalf of himself and Class Members, seeks recovery of all unpaid wages, including unpaid minimum wages, liquidated damages, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PROVIDE MANDATED MEAL PERIODS**  
**OR TO PAY ADDITIONAL WAGES IN LIEU THEREOF**  
**(Cal. Labor Code §§ 226.7, 512, 558; IWC Wage Order 9, § 11)**

40. Plaintiff hereby incorporates by reference Paragraphs 1 through 37 above as though fully set forth herein.

41. Labor Code § 512(a) and IWC Wage Order 9, § 11(A) provide that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee.

42. Labor Code § 512(a) and IWC Wage Order 9, § 11(B) further provide that an employer may not require, cause, or permit an employee to work for a period of more than ten hours per day without providing the employee with a second uninterrupted meal period of not less than 30 minutes, except that if the total hours worked is not more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

43. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any mandated meal period.

44. Pursuant to Labor Code § 226.7(b) and IWC Wage Order 9, § 11(D), an employee is entitled to one additional hour of pay at the employee's regular rate of pay for each work day

1 that the meal period was not provided.

2 45. On information and belief, and at all times relevant, Plaintiff alleges that he and  
3 Class Members systematically worked periods of more than five (5) hours without receiving the  
4 mandated 30-minute duty-free meal period and for periods of more than ten (10) hours without  
5 receiving the mandated second 30-minute duty-free meal period while in the employ of  
6 Defendants.

7 46. On information and belief, Plaintiff and Class Members did not voluntarily or  
8 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from  
9 Plaintiff and/or Class members were not willfully obtained, were not voluntarily agreed to, were a  
10 condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not  
11 permit or authorize Plaintiff and Class Members to take meal periods in accordance with  
12 California law.

13 47. By their failure to provide Plaintiff and Class Members with meal periods as  
14 required by California law, and failing to pay one hour of additional wages in lieu of each meal  
15 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage  
16 Order 9, § 11. Accordingly, Defendants are liable for one hour of additional wages at the  
17 employee's regular rate of compensation for each work day that a meal period was not lawfully  
18 provided.

19 48. As a result of Defendants' unlawful acts, Plaintiff and Class Members have been  
20 deprived of additional wages in amounts to be proven at trial, and are entitled to recover such  
21 amounts, plus interest and penalties thereon, attorneys' fees and costs of suit.

22 49. Defendants are also liable to Plaintiff and Class Members for the civil penalties  
23 provided for in Labor Code § 558 because of the violations alleged in this claim for relief.

24 50. Further, after the employment of Plaintiff and other members of the Class ended,  
25 Defendants never paid them all wages due to them (as defined by applicable California law)  
26 because these employees were never paid any of the additional hours of wages with respect to  
27 meal periods described above in this paragraph. Defendants' failure to pay said additional hours  
28 of wages after these employees' employment ended was willful within the meaning of Labor Code

§ 203. Therefore, under Labor Code § 203, as additional relief and continuation of wages for failure to comply with the meal period laws, each of these employees is entitled to one day's wages, at the regular rate, for each day following the time periods in Labor Code §§ 201 or 202, up to a maximum of 30 days' wages for each employee. Because none of these employees were ever paid the additional hours of wages with respect to meal periods described above in this paragraph, each of these employees is entitled to 30 days' additional wages.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE MANDATED REST PERIODS OR TO PAY ADDITIONAL WAGES IN LIEU THEREOF (Cal. Labor Code §§ 226.7, 558; IWC Wage Order 9, § 12)**

51. Plaintiff hereby incorporates by reference Paragraphs 1 through 48 above as though fully set forth herein.

52. IWC Wage Order 9, § 12(A) mandates that employees be provided with a rest period of ten (10) minutes per four (4) hours worked, or major fraction thereof.

~~53. Labor Code § 226.7(a) provides that no employer shall require an employee to~~  
work during any mandated rest period.

54. Pursuant to Labor Code § 226.7(b) and IWC Wage Order 9, § 12(B), an employee is entitled to one additional hour of pay at the employees' regular rate of pay for each work day that the rest period was not provided.

55. On information and belief, and at all times relevant, Plaintiff alleges that he and Class Members were denied the required ten (10) minute rest periods for every four (4) hours, or major fraction thereof, worked per day as non-exempt employees, and that Defendants further failed to provide compensation in lieu of rest periods not provided.

56. On information and belief, Plaintiff and Class members did not voluntarily or willfully waive the mandated rest periods. Any expressed or implied waivers obtained from Plaintiff and/or Class members were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff and Class members to take rest periods in accordance with California law.



1           57. By their failure to provide Plaintiff and Class members with rest periods as required  
 2 by California law, and failing to pay one hour of additional wages in lieu of each rest period not  
 3 provided, Defendants willfully violated Labor Code § 226.7 and IWC Wage Order 9, § 12.  
 4 Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate  
 5 of compensation for each work day that a rest period was not lawfully provided.

6           58. As a result of Defendants' unlawful acts, Plaintiff and Class Members have been  
 7 deprived of additional wages in amounts to be proven at trial, and are entitled to recover such  
 8 amounts, plus interest and penalties thereon, attorneys' fees and costs of suit.

9           59. Defendants are also liable to Plaintiff and Class members for the civil penalties  
 10 provided for in Labor Code § 558 because of the violations alleged in this claim for relief.

11           60. Further, after the employment of Plaintiff and other members of the Class ended,  
 12 Defendants never paid them all wages due to them (as defined by applicable California law)  
 13 because these employees were never paid any of the additional hours of wages with respect to rest  
 14 periods described above in this paragraph. Defendants' failure to pay said additional hours of  
 15 wages after these employees' employment ended was willful within the meaning of Labor Code §  
 16 203. Therefore, under Labor Code § 203, as additional relief and continuation of wages for failure  
 17 to comply with the rest period laws, each of these employees is entitled to one day's wages, at the  
 18 regular rate, for each day following the time periods in Labor Code §§ 201 or 202, up to a  
 19 maximum of 30 days' wages for each employee. Because none of these employees were ever paid  
 20 the additional hours of wages with respect to rest periods described above in this paragraph, each  
 21 of these employees is entitled to 30 days' additional wages.

22                                   **FOURTH CAUSE OF ACTION**  
 23                                   **FAILURE TO TIMELY PAY FINAL WAGES**  
                                       **(Cal. Labor Code §§ 201-203)**

24           61. Plaintiff hereby incorporates by reference Paragraphs 1 through 58 above as though  
 25 fully set forth herein.

26           62. Labor Code § 201 requires employers to immediately pay any wages, without  
 27 abatement or reduction, to any employee who is discharged.

28           63. Labor Code § 202 provides that if an employee quits his or her employment, his or

her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

64. For a violation of Labor Code §§ 201 or 202, Labor Code § 203(a) provides that where the employer willfully fails to timely pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced, but that the wages shall not continue for more than 30 days.

65. As alleged above, Plaintiff and Class Members are entitled to compensation for all wages earned, including without limitation, unpaid minimum wages and additional wages for meal and/or rest periods they were denied. Plaintiff and Class members are therefore entitled to Labor Code § 203 penalties.

66. More than 30 days have passed since Plaintiff and certain affected Class Members were terminated or have voluntarily left Defendants' employ without giving at least 72-hour notice, and on information and belief, they have not received payment pursuant to Labor Code § 203. As a consequence of Defendants' willful conduct in not paying all earned wages, Plaintiff and certain affected Class Members are entitled to 30 days' wages as a penalty under Labor Code § 203, as well as any underlying unpaid wages.

67. The exact amount of Labor Code § 203 penalties is all in an amount to be shown according to proof at trial.

#### **FIFTH CAUSE OF ACTION**

#### **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §§ 226, 226.6, 1174, 1174.5, 1175; IWC Wage Order 9, § 7)**

68. Plaintiff hereby incorporates by reference Paragraphs 1 through 65 above as though fully set forth herein.

69. Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the

1 last four digits of his or her social security number (or employee identification number), the name  
2 and address of the legal entity that is the employer, and all applicable hourly rates in effect during  
3 the pay period and the corresponding number of hours worked at each hourly rate by the  
4 employee.

5 70. Labor Code § 1174(d) requires, in part, that employers, including Defendants,  
6 maintain payroll records showing the daily hours worked and the wages paid to employees, among  
7 other requirements.

8 71. Pursuant to Labor Code § 1174.5, any person, including any entity, employing  
9 labor who willfully fails to maintain accurate and complete records required by Labor Code §  
10 1174(d) is subject to a penalty.

11 72. Pursuant to IWC Wage Order 9, § 7(A)(3), every employer shall keep time records  
12 showing when the employee begins and ends each work period. Meal periods and total hours  
13 worked daily shall also be recorded.

14 73. Additionally, IWC Wage Order 9, § 7(A)(5) requires employers to keep total hours  
15 worked in the pay period and applicable rates of pay.

16 74. At all relevant times, Defendants failed to maintain records pursuant to the Labor  
17 Code and applicable IWC Wage Order by failing to maintain records showing meal periods.

18 75. Defendants' failure to provide and maintain records required by the Labor Code  
19 and applicable IWC Wage Order deprived Plaintiff and Class Members of the ability to know,  
20 understand, and question the accuracy and frequency of meal periods. Therefore, Plaintiff and  
21 Class Members had no way to dispute the resulting failure to pay wages, all of which resulted in  
22 an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and Class Members  
23 have suffered and continue to suffer substantial losses related to the use and enjoyment of such  
24 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel  
25 Defendants to fully perform their obligations under state law, all to their respective damage in  
26 amounts according to proof at trial.

27 76. Furthermore, Defendants knowingly and intentionally failed to furnish Plaintiff and  
28 Class Members with complete itemized wage statements accurately listing gross and net wages

1 earned, the pay period begin date, and the address of the legal entity that is the employer.

2 77. As a result of Defendants' violation of Labor Code §§ 226(a), 226.6, 1174(d),  
3 1174.5, 1175, Plaintiff and Class Members have suffered injury and damage to their statutorily-  
4 protected rights.

5 78. Specifically, Plaintiff and Class Members have been injured by Defendants'  
6 intentional violation of California Labor Code § 226(a) because they were denied both their legal  
7 right to receive, and their protected interest in receiving, complete, accurate, itemized wage  
8 statements under Labor Code § 226(a).

9 79. By failing to keep and/or provide accurate records as required by Labor Code §§  
10 226(a), 1174(d) and IWC Wage Order 9, § 7, Defendants have injured Plaintiff and Class  
11 Members and made it difficult to calculate the unpaid minimum, regular, and additional meal and  
12 rest period wages owed, as well as interest due to Plaintiff and Class Members.

13 80. Plaintiff has also been injured as a result of having to bring this action to attempt to  
14 obtain correct wage information following Defendants' refusal to comply with many of the  
15 mandates of California's Labor Code and related laws and regulations.

16 81. Labor Code § 226(e) provides that if an employer knowingly and intentionally fails  
17 to provide an accurate wage statement listing, among other things, the amount of gross or net  
18 wages, the name and address of the legal entity that is the employer, the name of the employee and  
19 only the last four digits of his or her social security number or an employee identification number,  
20 then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for  
21 the initial violation and one hundred dollars (\$100) for each subsequent violation up to four  
22 thousand dollars (\$4,000).

23 82. Plaintiff and Class Members also seek and request, pursuant to Labor Code §  
24 226(g), injunctive relief to ensure compliance by Defendants with § 226(a), to wit, that the wage  
25 statements Defendants provide to their employees accurately list all wages earned, the pay period  
26 begin date, and the address of the legal entity that is the employer. Plaintiff also requests an award  
27 of costs and reasonable attorneys' fees.

28 83. The exact amount of Plaintiff's and Class members' damages is all in an amount to

1 be shown according to proof at trial.

2 **SIXTH CAUSE OF ACTION**  
 3 **VIOLATION OF UNFAIR COMPETITION LAW**  
 4 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

5 84. Plaintiff hereby incorporates by reference Paragraphs 1 through 81 above as though  
 6 fully set forth herein.

7 85. California Business & Professions Code §§ 17200, *et seq.*, prohibit acts of unfair  
 8 competition, which includes any "unlawful, unfair or fraudulent business act or practice...."  
 9 Plaintiff and Class Members, as herein alleged, have suffered and continue to suffer injuries in fact  
 10 due to Defendants' unfair and unlawful business practices.

11 86. Defendants, and each of them, are "persons" as defined under Business &  
 12 Professions Code § 17021.

13 87. As alleged herein, Defendants engaged in conduct that violated California's wage  
 14 and hour laws, including failing to pay wages for all hours worked, failing to provide mandated  
 15 meal and/or rest periods, failing to timely pay final wages upon separation of employment, and  
 16 failing to provide complete, accurate, itemized wage statements, all in order to decrease their costs  
 17 and increase their profits.

18 88. At all relevant times herein mentioned, Defendants did not pay Plaintiff and Class  
 19 Members all wages and monies and other financial obligations attached thereto to which they were  
 20 owed.

21 89. Defendants' violations of the California Labor Code and IWC Orders, and their  
 22 scheme to lower their payroll costs as alleged herein, constitute unlawful and unfair business  
 23 practices as it was done in a systematic manner over a period of time to the detriment of their  
 24 employees, including Plaintiff.

25 90. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
 26 unlawful, and harmful to Plaintiff, other Class Members, and to the general public. Plaintiff seeks  
 27 to enforce important rights affecting the public interest within the meaning of Code of Civil  
 28 Procedure § 1021.5.

91. Defendants' activities, as alleged herein, are violations of California law, and

1 constitute unlawful business acts and practices in violation of California Business & Professions  
2 Code §§ 17200, *et seq.*

3 92. A violation of California Business & Professions Code §§ 17200, *et seq.* may be  
4 predicated on the violation of any state or federal law. All of the acts described herein as violations  
5 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in  
6 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and  
7 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in  
8 violation of California Business and Professions Code §§ 17200, *et seq.*

9 93. Plaintiff, individually, and on behalf of members of the putative Class, has no plain,  
10 speedy, and/or adequate remedy at law to redress the injuries which he has suffered as a  
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of  
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,  
13 and on behalf of members of the putative class, has suffered and will continue to suffer irreparable  
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said unfair,  
15 unlawful, and/or fraudulent business practices.

16 94. Plaintiff, individually, and on behalf of members of the putative class, is entitled to,  
17 and does seek such relief as may be necessary to disgorge the profits which Defendants have  
18 acquired, or of which Plaintiff and Class Members have been deprived, by means of the above-  
19 described unfair, unlawful and/or fraudulent business practices. Plaintiff and the members of the  
20 Class are not obligated to establish individual knowledge of the unfair practices of Defendants in  
21 order to recover restitution.

22 95. Plaintiff, individually, and on behalf of members of the putative Class, is further  
23 entitled to and does seek a declaration that the above-described business practices are unfair,  
24 unlawful, and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from  
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the  
26 future.

27 96. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiff and Class  
28 Members are entitled to restitution of the wages withheld and retained by Defendants during a



1 period that commences four years prior to the filing of this complaint; a permanent injunction  
 2 requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award  
 3 of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable  
 4 laws; and an award of costs.

### 5 PRAYER FOR RELIEF

6 Plaintiff, on behalf of himself and all others similarly situated, prays for relief and  
 7 judgment against Defendants, jointly and severally as follows:

8 1. That the matter be certified as a class action pursuant to California Code of Civil  
 9 Procedure section 382 and applicable California Rules of Court;

10 2. That Plaintiff be appointed as the Class Representative;

11 3. That counsel for Plaintiff be appointed Class Counsel;

12 4. On the First Cause of Action: To pay all minimum, regular and/or overtime wages  
 13 for all hours worked as required by law in an amount according to proof;

14 5. On the Second Cause of Action: To pay all meal period premiums for failure to  
 15 provide off-duty meal periods as required by law, in an amount according to proof;

16 6. On the Third Cause of Action: To pay all rest period premiums for failure to  
 17 provide paid 10-minute rest periods as required by law, in an amount according to proof;

18 7. On the Fourth Cause of Action: For statutory penalties under Labor Code sections  
 19 203 related to Defendants' failure to timely pay all wages due to terminated or separated Class  
 20 Member, distributed in a fair and equitable manner in an amount in an amount according to proof;

21 8. On the Fifth Cause of Action: For statutory penalties under Labor Code sections  
 22 226(e) and (g) related to Defendants' failure to provide accurate wage statements to the extent  
 23 provided by law, up to a maximum of \$4,000.00 per Class Member, distributed in a fair and  
 24 equitable manner in an amount in an amount according to proof;

25 9. On the Sixth Cause of Action: For restitution of wages due to the UCL Subclass  
 26 members pursuant to Business & Professions Code §§ 17200, *et seq.*, distributed in a fair and  
 27 equitable manner in an amount according to proof and an injunction compelling Defendants to  
 28 meet their obligation henceforth to properly pay minimum wages and meal and rest period

1 premiums;

2 10. For reasonable attorney's fees pursuant to Labor Code section 1194 and/or for  
3 public benefit as provided by Code of Civil Procedure section 1021.5, or other applicable statute;

4 11. For reasonable litigation costs, including costs of administration and accounting;

5 12. For the Court to otherwise determine the appropriate remedy to compensate each  
6 Plaintiff and Class Member as required to promote fairness and justice, including but not limited  
7 to establishing procedures for compensation, compensation amounts and fluid recovery if  
8 appropriate; and

9 13. Any such other and further relief as this Court may deem necessary, just, and/or  
10 proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demands a jury trial of all claims triable as of right by jury.

13  
14 Dated: May 14, 2018

**COHELAN KHOURY & SINGER  
LEBE LAW, APC  
MESRIANI LAW GROUP, APLC**

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16  
17 By: \_\_\_\_\_

18 Michael D. Singer  
19 J. Jasoly Hill

20 Attorneys for Plaintiff MARC RIVERA  
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